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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement*/ submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 January 2001]

*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

GE. * 2 0 0 1 0 1 1 0 0 9 *

ENG

(1) The Romanian Independent Society of Human Rights (SIRDO) is a non-governmental organisation, established in 1990, whose purpose is the protection and the promotion of human rights and fundamental freedoms.

By its actions of counselling and assistance of the victims of torture developed in accordance with the objectives of the undergoing programmes, SIRDO accomplished the creation of trustful relationship with the victims, the initiation of a dialogue with the competent governmental compartments (the General Police Inspectorate, the General Direction of Penitentiaries, the Military Prosecutor's Office Section)

SIRDO has 872 cases under analysis, where abuses of the authorities were registered. They take the form of torture and inhuman and degrading treatments committed by the police officers and guar during the detention in the police lock-up or in the penitentiary, the difference lying in the purpose of torture.

Ever since 1997 SIRDO has constantly signalled these abuses and in 2000 the organisation made its point when leading in to the 56-th session of the UN's Commission on Human Rights a written statement in the scope and consequences of torture in Romania. Periodically the UN Special Rapporteur on Torture was informed on a number of 872 cases by SIRDO.

(2) The petitioners - victims of physical and mental violence - described the methods used for torture, the means and the purpose of these practices, which are enough to assert that these practices have turned into a system in all regions of the country, and it is tolerated and even protected by the authorities.

The methods of torture used by the authorities consist in exerting physical and mental violence on victims, blows all over the body, made in such ways as to not leave too many traces of violence:

- the victim is cuffed in unnatural positions and is then hung up on a peg (the method is called "the roller");
- the victim is wrapped in a wet carpet and then is kicked, clubbed or hit with hard objects;
- the victim is pushed against office equipment or walls;
- the victim is connected to a power device and is electrocuted; metallic conductors are placed on the victim's arms, back, legs, or even genitals;
- mental trauma: outrage, vulgar and violent language, direct threats or threats against other persons (wife, close relatives, victim's friends), promises made in order to confuse the accused, while the victim is sometimes exposed to cold weather, hunger or thirst.

The means used when applying torture are: the fists, the legs, rubber clubs, baseball bats, cuffs, metallic bars, chairs, electric shocks devices etc.

The purpose of applying torture, such as it results from declarations and reports is:

- to get the victim or a third person acknowledge the accusation, to get information, confessions - made according to the investigators wishes;
- to punish the victim for an action that the victim or another person committed or is presumed to have committed (more frequently in penitentiaries);
- to intimidate the victim or exert pressure on another person;

- to determine the victim not to disclose certain aspects linked to developing the penal process.

The only forms of the victim's protest against these treatments are food refusal and self-maiming, as the access to remedies is systematically hindered.

(3) Although these aspects were presented to the competent authorities from the governmental structures (the Ministry of the Interior, the Public Ministry, the Ministry of Justice), the responses SIRDO got are formal and disclose a superficial approach of the problem of torture in Romania, and not a serious approach of the core matters.

By the consequences it produces, torture directly or indirectly affects large categories of population: men, women, underage persons, old persons, national minorities, foreigners, groups of people deprived of freedom.

(4) The Romanian Constitution shows that "no one can be subjected to torture or any kind of punishment or inhuman or degrading treatment" (art. 22, par. 2). The Penal Code and the Code of Penal Procedure also incriminate the application of torture (art. 267, Penal Code etc.)

More, Romania ratified on 9 October 1990 UN's Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment, and according to art. 11, par. s), this treaty is the internal law. Despite the existence of these legal provisions the responsible authorities seem not to understand the importance, the juridical power and the necessity to apply these provisions, and still prevails on obsolete secret norms that run counter to the constitutional provision (law no. 23/1969 on the regime of punishments application, secret military orders that settle the preventive arrest or the development of the penitentiary activity etc.)

The maintenance of military structures in the activities of police judiciary investigations within the penitentiary staff and Prosecutor's Offices runs counter to the international standards and recommendations on detention and penal investigations and hinders the control of civilian structures on the activity developed under a military regime.

(5) We can assert that the impunity against the authorities who are guilty of:

- physical and mental violence against the individual;
- intimidation and subtle manipulation exerted against the person;
- the formalism when approaching the complaints

already represents a traditional persecution practice, turned into a repressive system.

These practices are deeply rooted in Romania's communist past and they make the implementation of international conventions and the existence of an independent administrative civilian control impossible.

Being convinced of the truth contained in the Resolution 2000/68 of the Commission on Human Rights adopted on 27 04.2000 and of the viability of the recommendations on impunity, SIRDO considers that the possibility to conclude agreements with independent experts in change with the examination of all aspects of human rights infringement constitutes the key element for the states to acknowledge the maintenance of a systematical mechanism perpetuating human rights infringements.

SIRDO equally wishes to show that the activity of independent experts should not affect the mandate of UN's Special Rapporteurs, as regards an unwanted diminution of their intervention.

(6) Because of the abuses they commit, of the purely formal approach of the complaints coming from the petitioners and of the constant refusal to admit the existence of ill-treatment in Romania, the authorities block the possibility of the victims to use their right to remedies.

The victims right to remedies must ensure the individual's trust in the possibility to be guaranteed fairness, it must be effectively acknowledge and full and urgently applied.

(7) As regards the things presented above, SIRDO requests that the states participative effort should be quickened, using the competence of UN's Special Rapporteur on Torture in supporting UN's Commission on Human Rights to establish the monitoring procedure for supervising the maintenance of the request formulated in the statement E/CN.4/2000/NGO/41 in Romania:

- the full respect of the provisions of the art.2, par. 1 from the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- the application of art. 11 of the Convention, allowing the systematic supervision of rules, instructions, methods and practices of the investigation and of the provisions as regards the treatment of persons in any form of freedom deprivation;
- the process of demilitarising the state institutions, concerning the Ministry of the Interior (the Romanian Police) and the Ministry of Justice (the General Direction of Penitentiaries) and their subordination to the Local Administration with competencies in functioning as part of the community, as a guarantee of the respect for the person' s freedom and safety;
- the establishment of measures to rehabilitate the victims of torture, for them to obtain the necessary compensations for restoring their rights.

The alarming increase of the requests of the victims of torture, visible in the increase of the number of cases reaching SIRDO in 2000, in the form of reports that have been dated and signed by petitioners (872 cases) and the fact that these practices are present in all the regions of the country, enable us to request the Commission on Human Rights to take the most radical measures for eradicating torture in Romania, in cooperation with the Commission against Torture and using the competence of UN's Special Rapporteur on Torture.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement*/ submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 January 2001]

*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

GE.*200101107*

ENG

(1) The Romanian Independent Society of Human Rights (SIRDO) is a non-governmental organisation, established in 1990, whose purpose is the protection and the promotion of human rights and fundamental freedoms.

By counselling and ensuring the assistance of persons whose rights have been infringed in the relationship with the state authorities, SIRDO has created in time a working system with the victims of abuses based on trust, on the initiation on a dialogue with the competent governmental compartments. By the UN special consultative status ECOSOC obtained in 1998 SIRDO has been ensuring the accomplishment of a consultancy relationship with UN.

(2) In 2000 SIRDO continued the activities corresponding to its objectives:

- the monitoring of the respect of human rights in 37 penitentiaries. Interviews have been made and number of 5994 detainees have sent reports;
- activities of counselling and specialised juridical assistance granted to a number of 900 detainees (men, women, underage persons), who declared that they were submitted tot torture in the police lock-ups or in prisons;
- the support of an information programme on human rights education, comprising a number of 1850 detainees.

(3) The very large number of complaints coming from different categories of population as regards the modality the penal justice is made in Romania denotes a flagrant incompatibility among the institutional practices, the internal legal framework (the Penal Code, the Code of Penal Procedure, normative acts and secret military regulations etc.) and the standards of human rights protection and promotion that can be found in the international treaties and conventions ratified by Romanian and which, according to art. 11 in the Constitution, are the internal law.

The Parliament did not succeed to harmonise the internal laws directly focused on the person's freedom and make them coherent:

- the maintenance of Law no. 23/1969 on the regime of serving to punishments deprived of freedom;
- the adoption of new penal provisions in the Penal Code - Law no. 140/1996 unduly hardens the sum of punishments deprived of freedom, especially for minor offences;
- the maintenance of secret orders and military regulations (for example: order 410/1974 that settles the preventive arrest) that are not even accessible to judges.

(4) The promotion of alternative methods to deprivation of freedom has been practically annulled.

The institutional pressures of all kinds and the persecution by law annuls any chance of the individual to be judged with a view to finding out the truth, by respecting human dignity, and it hinders the free access to justice.

Manipulation, abuse and violence in the police lock-up are systematically and constantly applied in the first 24 hours; the investigation bodies "force" the detainee to acknowledge the offence in a declaration, for the investigators to go on gathering the evidence on the basis of the declaration. Abuses in this period can take various forms, ranging from violence to more subtle methods of intimidation and constraint.

According to law no. 54/1993, only the military prosecutor (an active officer) is the authority who has the exclusive competence of investigating the complaints handed in by the persons abused during the investigations.

In solving these complaints, the military prosecutors rely on the police for the investigation. The military prosecutors are not independent and impartial, and they systematically refuse to send police officers to Court for abusive acts. One may conclude that a detained person submitted to ill-treatments by the police finds it very hard to defend him/herself in the chaotic procedures and authorities, that are not characterised by rapidity.

In these circumstances the prosecutors continues the investigations the way highlighted by the police bodies, and she/he ignores the assertions of the accused or defendant.

The judges are reserved in rejecting the indictments of the prosecutors, because they are afraid that superior Courts could change their sentences, which has negative consequences on the annual grade or because they do not wish to burden the decision-taking process, which is already very stifling.

That is why the Courts rarely exert an active role in finding out the truth and they grant importance to the declarations given by the accused during the detention.

(5) The penitentiaries become overcrowded, a fact which proves the seriousness of the deterioration of the detention areas, the conditions being inhuman and degrading and tend to become a form of torture.

In the session no. 56/2000 of the Commission on Human Rights, the UN Special Rapporteur on Torture, when referring to the detention conditions in Romania, asserted that: "no state has the right to submit persons to such conditions, despite the constraints imposed by the lack of resources, the rigidity of the legal system or the time which is necessary for building new places." The level of over-population - according to the same report - is of the 180%, even over 200%. The necessity to reform the Romanian penal system, including all forms of detention, is evident.

(6) From among the main causes of over-population, we can enumerate:

- the lack of adequate penal legislation, based on humanitarian principles;
- the persistence of secret orders and military provisions, that settle the preventive arrest;
- there are no jails, and the persons detained under suspicion are under the custody of the Ministry of the Interior, which is unbearable;
- the infringement of the presumption of innocence;
- the long duration of the penal process;
- the cases with unknown author from the police records are solved by making recidivists acknowledge the offences by means of manipulation and constraint, which leads to substantial and unjustified increase of the sentence;
- the persons accused of having committed minor offences are detained;
- the liberation on parole is governed by arbitrary criteria, which are different in each Court or region, and they are often clearly focused against the detainee.

(7) The fact that the penitentiaries are over-crowded - which is a consequence of an incoherent, abusive penal policy deliberately headed by the Romanian state against the civilians - denotes a massive infringement of human rights and fundamental freedoms, of internal norms - the Constitution, penal laws and laws on penal procedures - and of international instruments.

Romania adhered to a series of international treaties, conventions and pacts, by signing and ratifying them:

- the International pact on the Civilian and Political Rights (9 December 1974)
- The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (9 October 1990).

(8) Considering the above-mentioned facts, SIRDO insistently requests the Commission on Human Rights, by using the competence of UN's Special Rapporteur on Torture, to urgently resort to adopting measures on the following specific problems, that will lay the basis of the reform of the detention system in Romania:

a) the harmonisation of the Romanian penal legislation to the international provisions;

b) the demilitarisation of the penitentiaries, which could ensure the transparency of the developed activities, and the application of an independent administrative control;

c) the establishment of alternatives to prisons;

d) the approach of a penal policy on the liberation on parole which can improve the reintegration of the detainee in society and the diminution of over-population;

e) the category of recidivists must be revised as regards the legislative framework and also the functioning of the state institutions and civil society;

f) the revision and re-evaluation of the incident reports made by the penitentiary authorities;

g) the abolishment of SIPA (Independent Unit for Protection and Anti-Corruption) - an anti-democratic and un-constitutional structure exerting an ill-fated role in the Romanian penitentiary system. Its activities - that are specific to secret military information services often have an illegal and abusive character (going beyond their attributions, abuse against the penitentiary staff and detainees, the latter even attempting to commit suicide in several cases);

h) the establishment of jails for persons detained under suspicion so that only detainees with final sentences should stay in penitentiaries and a real reform should start in the penitentiary, considering the purpose, the efficiency of custody and the programmes of social reintegration;

i) it is necessary to make changes on the service o guard and supervision in the process of reforming the penitentiary system. We consider that the staff guarding the detainees should belong to the Independent Cultural - Educative Service. Thus a relationship of trust could be built between the detainee and the staff directly dealing with the detainee, which would actively improve the programmes of the detainees'social reintegration;

j) the penitentiary should be opened towards community, and the penitentiary problems should be presented to the Prefect's Offices, City halls, Churches, local social services, NGO-s;

k) the penitentiaries should be visited periodically by judges, for the act of justice to become effective;

l) food should be served in open areas. At present a number of over 50,000 persons in penitentiaries are given food in the detention area, in poor hygiene conditions.

We wish to mention that these are the most important problems that SIRDO identified in the detention system in Romania. We think that the intervention of the Commission on Human Rights in Romania will enable the elaboration of a reform-programme that should be compatible with the international standards setting the rights of the persons deprived of freedom.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 January 2001]

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GE. *200101025*

ENG

(1) The Romanian Independent Society of Human Rights is a non-governmental organisation set up in 1990 focused on the protection and promotion of human rights and fundamental freedoms. SIRDO's main activities are the legal assistance and support for the disfavoured categories, human rights education and monitoring the way in which the state institutions respect the international obligations. The organisation focuses on research programmes meant to reflect the role of the law. Thus, we point to a phenomenon that may be entitled "Persecution by law."

(2) The law 140/1996 changed the Penal Code and instituted an accentuated repressive penal system, totally opposed to the advanced tendencies for the promotion of alternative means to the deprivation of liberty, to the decrease of its incidence, considering both the high costs of detention and its insecure educational character.

The limits of punishment were highly increased for some crimes and especially for those crimes against property.

We have thus come to witness situations where the crimes were relatively small, but the only applicable sanction was imprisonment with deprivation of liberty, even for minor offenders whose re-education would have obviously been achieved through any of the alternative measures above mentioned.

The immediate consequence of this legislation was the overpopulation of detention places, which did not fulfil the international standards, and the substantial increase of the costs the society had to pay. What is of great concern is that the state and its institutions do not focus of minimal detention conditions, maintaining the overcrowded imprisonment areas by repressive and abusive penal policies that may be found in the following causes:

- the sentence to imprisonment of persons accused for crimes with minor prejudices; SIRDO identified 588 persons sentenced to 893 years of imprisonment for a total prejudice of US$ 6,864;
- maintaining in detention persons with psychical illness, severe chronic illness or with major handicaps (blind persons, persons who have their legs or arms amputated, etc).

(3) During the penal trial and during the execution of the sentence, any person has the right to respect of human dignity, without discrimination.

The detention measure was a very frequent one and it was proved in practice that the majority of the complains for maltreatment by the police referred especially to this period. During the 24 hours, the research officers force the prisoner to give a statement of recognition of the crime so that they proceed to gathering the proofs.

The abuses made during this period are most various, from physical violence to more subtle means of intimidation and constraint.

Such abuses are under the incidence of penal provisions, but considering the military character of the police, the exclusive authority that inquires the complains is the military prosecutor.

According to Law. 54/1993, only active officers may become military prosecutors, their selection and training being made by the Ministry of Justice and the Ministry of Defence. Military prosecutors are also bind to the military disciplinary code.

Military prosecutors have no intermediary body of assistance in the investigation, their support in the investigation being the police officers.

Thus, the independence and impartiality of military prosecutors are insecure, the number of files sending to trial police officers for abuses being insignificant compared to the number of complains forwarded to this authority, most of them being solved through decisions of non-commencement of penal research (art. 228, align 6, Penal Code), cease or dissolving the penal research.

We may conclude that the person detained subjected to maltreatment by then police will find it impossible to manage through this jungle of authorities and procedures which are not characterised by celerity.

Thus, the prosecutor continues the investigation based of what the police has already concluded, not considering the declarations of the defendant.

(4) Once the file reaches the court instance, there are few the cases when the witnesses are heard, the decision being made on the basis of the statements given by the defendants at the police office.

Very seldom the court instances exercise their active role in finding the truth, and are limited to the administration of possible proofs requested by the accusation or defence, with a tendency to consider more important the statements given by the defendant during the detention period than the statements given during the court research.

For the future, in order to avoid abuses by the police, the centres of detention under the Ministry of Interior should regain their independence, as the practice has proved that many persons who were subjected to maltreatment hesitate to talk about them even to the prosecutor, for fear they should repeat as they return in detention.

Finally, we should mention that the Order 140/1974 regimenting the conditions of preventive arrest has a secret character, and it is necessary to have a law at the disposal of the public.

(5) The right to defence is a fundamental right consecrated in various international documents.

The assistance granted by "office attorneys" proved unfunctional, this assistance being based on the simple physical presence of the attorney or signing certain statements. When the decision of preventive arrest is taken the office defence is formal, the attorney being a simple "assistant" that does not interfere during the hearing.

As the research ends, the file goes to court and the attitude of the office attorney remains unchanged.

Thus, the final conclusions presented by the attorney have a general character applicable to any of the penal causes on the role, and the attorney considers his/her mission fulfilled.

(6) In the whole of the penal trial a special category is formed by recidivists.

Anytime a crime is committed, the first investigated are those who had a previous sentence for similar crimes, their simple existence being a proof of guilt.

These persons are pressured by the research officers who make them not only admit the crime, but also to take responsibility for other similar crimes with unknown authors in the records of the police.

In the case of recidivists it is impossible to apply any alternative measure to deprivation of liberty. Thus, the preventive arrest has almost become a rule in their case and the time of preventive arrest is considered part of the sentence of detention.

The simple state of recidive is sufficient for the preventive arrest, even if information is insufficient that the defendant tries to oppose to the finding of the truth.

The transformation of the preventive arrest in a rule for the recidivists evidently harms the presumption of innocence.

We must mention that according with art. 59 Penal Code, the penal antecedents are a criteria for parole. Based on this legal ground, the commissions for parole within penitentiaries disposed the postponing of release of certain recidivists, even if all other condition for cease of sentence and behaviour during detention were fulfilled.

Thus, the position of the persons with penal antecedents related to the whole penal system is extremely precarious, legal changes been needed urgently in order to insure the respect of the presumption of innocence that should apply to recidivists, too.

SIRDO considers urgent the following measures:

- the adoption by the authorities of measures regarding the grant of amnesty (art. 119, Penal Code)
- measures for the rehabilitation of persons (art. 133, Penal Code) that suffered condemnations on the basis of penal and procedure decisions incompatible with the requests of respecting human rights and fundamental freedoms.
- the abrogation of all norms with incidence in the act of penal justice, to the extent in which they are contrary to the international regimentation on the independence of justice, its administration and the matter of impunity.

The support of the Human Rights Commission is essential in our point of view. We forward the phenomenon of "persecution by law" also to the attention of the High Commissioner for Refugees (HCR) as a possible reason invoked by persons affected by the act of justice as effect of the law for granting complementary protection, in accordance to the individual guarantees applicable to the "de facto" refugee status. We may remind that the Commission on Civil Liberties and Internal Affairs of the European Union, in its analysis on the harmonisation of the complementary forms of protection for the refugee status, situates the risk of infringing fundamental rights as a clause of exclusion in the "B" type status.

In order to clear this problem, SIRDO is available for counselling and concrete examples of cases in our records.

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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement*/ submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 January 2001]

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GE.*200101013*

ENG

1. SIRDO's main objective is the protection and the promotion of human rights and fundamental freedoms. As early as its establishment, in the year 1990, the programmes of the organisation have been mainly focused on the assistance, the juridical counselling and the support offered to the disfavoured categories: victims of the infringement of human rights during the penal process, victims of torture, victims of domestic violence, persons deprived of freedom who are in the police lock-ups or in penitentiaries, foreigners, refugees, migrants etc.;

2. By this report we request the attention and the intervention of the Commission cn Human Rights as regards three situations in which women in Romania are submitted to acts of violence, namely: a) domestic violence; b) violence and the practice of torture in police lock-ups; c) violence and ignoring the right to health in penitentiaries.

a) Women who are submitted to acts of violence do not rejoice total protection from the state in the case of domestic violence.

An important chapter is the programme "Genesis", focused on actions of monitoring Romania's respect for the pledges regarding the revision of legislation and the practice of state institutions on the basis of the provisions of the UN Convention on the Elimination of All Forms of Discrimination against Women and the implementation of the Beijing Platform on the integration of women's fundamental rights in the gender perspective. Among SIRDO's activities, an important position is held by the juridical counselling of the victims of domestic violence.

In the year 1999, SIRDO presented to the Commission on Human Rights on its 56th session, a written statement (E/CN.4/NGO/42, Item 12 (a) of the provisional agenda) referring, among other things, to the necessity to harmonise the national legal framework to the international standards, so that it should allow efficient actions from the state institutions, especially Police and Justice.

- By Law no. 197 for the modification and completion of provisions from the Penal Code, issued in the Official Monitor on 15 November 2000, the Parliament of Romania adopted measures that sanction the acts of violence within the family and place the victims who are usually women and children under protection. By the decision of the Prime Minister of Romania, appointed after the elections in November-December 2000, starting with 4 January 2001 the law application was suspended and thus the main reform measure for the protection of victims of domestic violence was implicitly annulled, alongside with the mechanism for the settlement of the institutional policies and programmes of intervention and support.

In our opinion, the Commission on Human Rights, together with the Committee on the Elimination of Discrimination against Women should establish the monitoring of the manner in which the state institutions respect the pledges that devolve from the internal and international human rights norms. We also request the intervention of the Special Rapporteur on violence against women, who received from Romania requests from the victims to be supported. We consider that the mutual

radical intervention that these organisms must have should take the following landmarks into consideration:

- the monitoring of the concrete actions of the Romanian government regarding the harmonisation of the internal legislation with the international standards with a view to a well-grounded reconsideration of the role of Law no. 197/2000, as well as the law's application by annulling the measure of suspending its application

- the respect for the provisions of the Governmental Decision no. 852/23.09.1996, by means of which the Pilot Centre for the Protection and Assistance of Victims of Domestic Violence was established; support for the development of a national network of centres and the improvement of equipment and conditions that are necessary for the development of assistance of victims of domestic violence;

- the initiation of programmes meant for the education and training of public servants, of police officers and magistrates on activities of assistance, representation and intervention in cases of domestic violence and on notions on equality and gender;

- concrete support for women who are victims of domestic violence by means of free juridical assistance in order to accomplish their access to national and international justice;

- the removal of the Division for the Equality of Opportunity, the General Division for the Coordination of Women's Rights and the Division of Elaboration of Family Policies from the Ministry of Labour and Social Protection and their establishment under a unique name as a State Secretariat for the promotion of gender policies and their special involvement for doing away with the phenomenon of violence against women;

b) Another phenomenon that we wish to submit to the attention of the Commission on Human Rights is violence against women when the state is the main persecution agent. We can appeal to numerous reports received from women who are in police lock-ups or in penitentiaries. These reports look in detail into the manner in which the police officers submit women in police lock-ups to torture, inhuman or degrading treatments - which many times have sexual implications also.

Having in view the fact that the national legal system contains clear provisions as regards the interdiction of acts of torture - the Constitution (art. 22, par. 2) the Penal Code (art. 267, par. 1), the Code of Penal Procedure (art. 5, par. 1) - and that Romania ratified in 1994 the Convention against Torture and has the obligation to respect the international and regional norms that stipulate the rights and obligations of persons deprived of freedom, we insistently request the intervention of the Commission for establishing the following measures:

- to put a stop and prevent the acts of violence against women, happening in police lock-ups;
- priority of women victims of torture to justice;
- punishment against the guilty people;
- the respect of the right to an effective remedy.

Consequently we request that the Commission should include in its mechanisms the Committee against Torture, the Committee on the Discrimination against Women, and use the competence of the Special Rapporteur on Violence against Women and of the Special Rapporteur on Torture who until now have received a number of approximately 40 cases from Romania.

c) Women have also informed us by means of their reports - that they have signed and dated - that the right to health is ignored in the penitentiaries in Romania, including cases where pregnant women do not benefit of appropriate food or competent medical care.

Many times the gender principles are not respected, and quite often the chiefs of the women sections in penitentiaries are men who often behave in a violent manner.

By this report, we request the support of the Commission, the Committee on the Discrimination against Women and the UN Rapporteurs on Torture and Violence against Women who have received cases from Romania dealing with these issues, for:

- the establishment of positive measures with a view to organising a penitentiary area where the treatment of women deprived of freedom should be adapted to international standards;
- women in penitentiaries should have access to justice and they should be supported for building their defence;
- punishment against the persons who are guilty of acts of torture or violence;
- the cancellation of SIPA - Independent Unit for Protection and Anti-Corruption - a descendant of the former security service, which is guilty of acts of diversion and instigation of women detainees one against the other and against the penitentiary staff, and whose attributions overlap those of the penitentiary staff, the latter being also responsible for creating an environment dominated by diversion and suspicion.;
- counselling and support for taking the measure of demilitarising the police and the staff of the penitentiaries, who, under the cover of the military orders, hinders the possibility of an independent administration control in the detention areas

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RIGHTS OF THE CHILD

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(1) SIRDO is a non-governmental organisation that has been functioning for the last 10 years in Romania, its purpose being the protection and the promotion of human rights and fundamental freedoms. The activities of the organisation are currently focused on the assistance and legal support for disfavoured categories, human rights education and the monitoring of the manner in which the state institutions respect the international pledges.

(2) In the year 2000, with the support of the Information and Documentation Centre on the Council of Europe in Bucharest, SIRDO developed the project of education by means of information on human rights notions for the detainees in the penitentiaries in Romania.

Special attention has been granted to the treatment applied to underage people, who are deprived of freedom. According to the internal legal provisions, any person younger than 18 are considered to be underage. The General Direction of Penitentiaries within the Ministry of Justice has in custody underage people in the Re-education centres (CR) in Tichilesti and the one in Gaesti. These institutions house confined underage people and also convicted underage people who have been deprived of freedom as a consequence of a Court decision. Both Centres have a regime of confinement, such as detention and at Tichilesti there is also an echelon of adult detainees, which allows the existence of a guarding system, formed of armed staff and exterior enclosure, with a watch tower placed higher.

(3) The confined underage people are brought to CR by police officers, and they are street children, children abandoned by their parents in public establishments, underage people from orphanages, underage people whose parents have separated, most of them being Rroma - the specific features of their background being poverty and illiteracy - and underage people with mental retardation. Being unable to solve their problems on social security, the underage are confined in the CR on the basis of a judiciary decision.

The convicted underage people are taken to CR on the basis of a Court decision, taken as a consequence of the underage having made offences stipulated in the national penal laws. In Romania there are special Courts for the underage, and the underage are taken to the places where they made offences until the final judgement. In most penitentiaries from Romania there are underage people who have been sentenced or whose case is still being judged. They are separated from the rest of the detainees, but they are not treated differently according to their age and most of the times they are subordinated to the room chief, who is an adult appointed by the management of the penitentiaries.

(4) The role of the police and of the Prosecutor's Office is essential for establishing the guilt of the underage. The investigation is violent, it is conducted in the absence of the parents or the ex officio lawyer, and the practice of accusing the underage for files with unknown authors is quite frequent. An aberrant case in SIRDO's attention is that of an underage male, taken from the street by police officers, who beat him during the investigation for acknowledging a number of 200 (two hundred!) offences. If underage people are involved, justice becomes the accomplice of police and the Prosecutor's Office, without exerting its active role during the judiciary investigation. For underage people sentenced to punishments, punishment constitutes penal antecedents at the age of 18.

In the CR, the confined underage and the convicted underage are equally applied treatments outside the field of children's rights protection and respect for the international norms that are to be applied to the juvenile delinquents deprived of freedom. The underage people's forms of protest are self-maiming and food refusal.

(5) Supporting our report by means of the things presented above, we consider that the Romanian State is guilty of the following:

- the practice of torture and inhuman and degrading treatments against underage people during the police investigation and the Prosecutor's Office investigation;
- the annulment of the right to a fair trial by ignoring the underage people's declarations as regards the atrocities committed by the authorities during the investigation stage;
- the practice of torture and inhuman and degrading treatments by guards, in the CR;
- the isolation of the underage population - who should benefit of social help and support for social integration - in institutions with a confinement regime, the submission of underage delinquents to isolation, shortages and punishments;
- a discipline regime similar to the one in a penitentiary, as punishments and sanctions are applied by a guarding and supervision system and by teachers in charge with their education and with the liquidation of illiteracy;
- methods of diversion and a state of suspicion created by the interference of SIPA (Independent Unit for Protection and Anti-Corruption) in the underage people's most intimate problems;
- the infringement of the right to education, as the provisions of Law no. 23/1969, from the Communist period, are also applied in the CR, the law establishes the main purpose for the penitentiary system, namely the re-education by means of work.

The infringement of the right to education by applying punishments including isolation up to 15 days, while the underage are excluded from school education.

The underage are forced to apply for a programme of professional training for jobs which are not competitive on the labour market, at the end of which they are offered certificates which are inferior as regards the duration of training, as compared to the certificates obtained by free underage people who have graduated from vocational schools.

The underage are submitted to forced deprivation of freedom until they are 18 if they can not obtain that qualification;

- the infringement of the right to health, as there are no serious measures on hygiene that are necessary in large groups of people. Special treatments for serious physical or psychic illnesses are lacking and they are exterminated outside the national system of protection, care and aid for people with deficiencies.
- the use of forced labour of the underage and their obligation to develop practical activities that require major physical efforts for their age (i.e. carpentry, manufacturing of metal, metal nets, luxury furniture, concrete prefab and panels and slabs for roads, car painting and repairs etc.), while labour protection norms are utterly ignored. The beneficiaries of the products are either private firms that have firm order contracts, or the staff of the centres, which benefit of the forced labour of the underage, according to the internal norms of the General Direction of Penitentiaries. This is an official practice, and in front of the CR in Gaesti there is a panel advertising the products of the underage people's forced labour.

(6) In these dramatic circumstances, having in view that Romania ratified the Convention on the Rights of the Child in 1990, that it has numerous obligations devolving from the international and regional instruments in which it is a party, we insistently request the Commission on Human Rights, by using the competence of the Rapporteur on Torture and of the Rapporteur on the Rights of the Child, who have received concrete cases, to urgently resort to the following measures, together with UNICEF and ILO:

- to request Romania to present a detailed report regarding the scope of juvenile delinquency, in order to establish the measures meant to qualify the establishment of the special Court for the Underage;

- the separation of delinquent sentenced underage people from confined underage people and their repartition in competent institutions that should answer the necessities to protect the right to health and the right to education, and the CR should be sub-ordered to the Ministry of the National Education;

- the establishment of the Penitentiary specialised in delinquent tried and sentenced underage people, that should have an open regime and the necessary capacities for an efficient custody, by programmes that should have in view the major interest of the child, the child's social integration. The demilitarisation of the penitentiary staff and the cancellation of the information service SIPA;

- the hospitalisation of the underage with physical or mental deficiencies who are at present in the custody of the General Direction of Penitentiaries, in health institutions, for them to rejoice an adequate treatment of recovery and effective protection. According to the law (Penal Code, art. 105), there is a possibility for the underage belonging to this category to be hospitalised in a Medical-Training Institute, that should be different from the Centre of Re-education;

- sanctioning Romania for practising torture, inhuman and degrading treatment on the delinquent underage who are in police lock-ups and in Centres of Re-education and in penitentiaries. The monitoring of the way delinquent underage people are treated during the investigation, by respecting the right to a hearing only in the presence of the parents or the legal defender. Granting free assistance during the penal process for the underage victims, by paying the appropriate respect for the defence, the punishment of the guilty persons and the possibility to obtain remedies;

- sanctioning Romanian for practising the forced labour of the delinquent children who are deprived of freedom and for the fact that profits are obtained from their work;

- the establishment of emergency measures for Romania's unreserved ratification, of ILO Convention no. 182 - Combat the Worst Forms of Child Labour.